

REMARKS

On page 2 of the office action, the drawings were objected to for failing to show every feature of the invention recited in the claims, namely the "stomped portions" and "the membrane having first and second end portions respectively blending into the first and second stomped portions". In view of the cancellation of claims 19 and 22, the Applicant submits that this ground for objection is now moot.

On page 3 of the office action, claims 7, 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Machacek in view of Ausnit '414. The Examiner asserts that it would have been obvious to employ the membrane of Ausnit in the bag of Machacek "to provide for a liquid tight seal". The Applicants traverse this ground of rejection for the following reasons.

To establish a prima facie case of obviousness, three basic criteria must be met by the Examiner, as set forth at MPEP 706.02(j). First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the combined prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's

disclosure. The Applicant demonstrates below that Machacek teaches away from Applicant's invention and rather than providing motivation to incorporate the leakproof membrane of Ausnit '414, instead would have motivated the person skilled in that art to not incorporate the membrane of Ausnit.

The Ausnit '414 patent discloses sealing gasket means in the form of a thin tongue flange (e.g., item 33 in Figures 2 and 3). "The principal aim is to assure that when the zipper 27 is closed, a thoroughly fluid tight relationship is attained throughout the length of the zipper with which the gasket flange 33 should be coextensive." [Col. 3, lines 19-23; emphasis added.] In accordance with alternative embodiments shown in Figures 17-21 of the Ausnit '414 patent, the gasket flanges are permanently sealed to both zipper webs, in which case the gasket flanges:

serve not only as hermetic seals between the zipper webs, but also serve not only [sic] as tamper evident or tamper discouraging means for the bag or package to which any of these zipper assemblies may be secured. In order to gain access into the associated bag it is necessary to rupture the gasket flange. Therefore, if any gasket flange is ruptured unauthorized, it will be clearly evident that the bag or package has been tampered with.

[Col. 8, lines 6-14.]

The Machacek patent also discloses a reclosable bag having a leakproof zipper. However, instead of providing a membrane in between the zipper profiles, Machacek proposed that the zipper profiles themselves be designed to act as a leakproof seal - meaning that adding a further leakproof seal in the form of a

gasket would be superfluous. For example, the Machacek patent states: "The close tolerances and dimensions of the male interlocking member 16 and the female interlocking member 20 ensure a tight interlock between the profiles that provides leak proof properties." [Col. 3, lines 27-30; emphasis added.] Machacek further states: "The surfaces of the fulcrum members 32, 34 are contoured to create a leak proof seal between the interlocked profiles 12, 14 at the fulcrum 36." {Col. 3, lines 44-47; emphasis added.} As clearly seen in Figures 2 and 3 of Machacek, the fulcrum members 34 and 36 are in contact along a contour. By definition, these contacting surfaces form a liquid tight seal because there is no interstice between the fulcrum members to provide a path for liquid. The Applicant respectfully submits that it would be pointless to place the membrane of Ausnit in between the abutting fulcrum members since the interface between them is already a "leak proof seal".

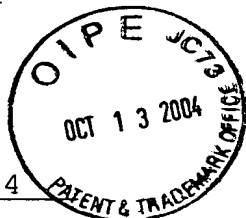
Furthermore, the Applicant submits it would not be obvious to incorporate the Ausnit membrane in the slider-operated zipper of Machacek for the purpose of providing a tamper-evident feature. If the person skilled in the art were to attempt to provide the Machacek zipper with a tamper-evident feature, the obvious expedient would be to provide a membrane that connects the zipper flanges to each other. Such a tamper-evident feature can be seen in Figure 3 of U.S. Patent No. 6,409,384 to Provan et al. It would not be obvious to provide a tamper-evident feature that lies in the interstice between the zipper profiles, as proposed by the Examiner, because as explained in the

preceding paragraph, a membrane between the liquid-tight fulcrum members is superfluous.

Consequently, the Applicant can see no motivation for combining the teachings of Machacek and Ausnit in the manner proposed by the Examiner. Both Machacek and Ausnit disclose a zipper that is leak-proof. There is no obvious reason why the leak-proof feature of Ausnit, namely, the sealing gasket, should be imported into the Machacek zipper when the latter is already leak-proof. Accordingly, one can find no motivation for importing the gasket of Ausnit into the slider-zipper assembly of Machacek. Without such motivation, the Examiner has failed to make a *prima facie* case for obviousness of Applicant's claimed invention. Accordingly, the Applicant respectfully requests that the obviousness rejection based on Machacek and Ausnit be withdrawn.

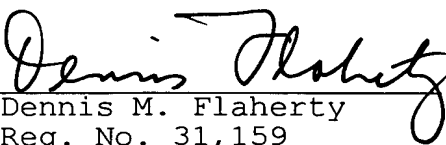
The rejections of claims 19-26 as being obvious over Machacek in view of Ausnit and further in view of Buchman have been mooted by the cancellation of claims 19, 20 and 22-26 and the amendment of claim 21 to depend on claim 7.

In view of the foregoing, the Applicants submit that this application is now in condition for allowance. Reconsideration of the application and allowance of claims 7, 9, 10, 21, and 27-33 are hereby requested.



Respectfully submitted,

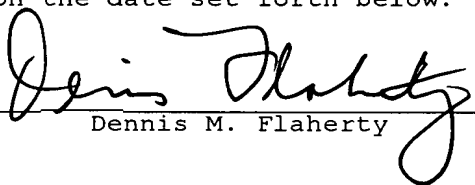
October 7, 2004
Date


Dennis M. Flaherty
Reg. No. 31,159
Ostrager Chong Flaherty &
Broitman P.C.
250 Park Avenue, Suite 825
New York, NY 10177-0899
Tel. No.: 212-681-0600

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October 7, 2004
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Dennis M. Flaherty